

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-031021-001 DT

09/25/2012

HON. SHERRY K. STEPHENS

CLERK OF THE COURT  
C. McCain  
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

KIRK NURMI

MINUTE ENTRY

The court has considered the Defendant's Motion to Reconsider its ruling on Defendant's Motion to Preclude the State from Arguing Lack of Remorse During any Potential Sentencing Phase filed September 10, 2012. In that pleading, Defendant argues she intends to assert at trial that she acted in self-defense and that her actions were justified. If she is convicted, Defendant will continue to assert she is not guilty at all phases of her trial. Consequently, Defendant argues, the State should not be permitted to comment on her assertions of innocence by arguing her lack of remorse. As support for her position, Defendant relies on *State v. Trujillo*, 227 Ariz. 314 (App. 2011) and *State v. Hardwick*, 183 Ariz. 649, 935 P.2d 1384 (1995). In both cases, the trial court, during sentencing, noted the defendant's lack of remorse. In both cases, the appellate courts concluded considering lack of remorse when a defendant claims innocence violates the defendants' Fifth Amendment rights under the United States Constitution.

In its Objection to Defendant's Motion to Preclude the State from Arguing Lack of Remorse During Any Potential Sentencing Phase, filed September 4, 2012, the State argues that once the defendant is convicted of murder, the State may properly comment on her lack of remorse as fair rebuttal to her allocution, citing *State v. Cota*, 229 Ariz. 16, 272 P.3d 1027, 1043 (2012).

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Since this court does not know how the facts at trial will unfold or what the parties will argue, the Court is deferring its ruling on this issue. The parties will be given an opportunity to argue this issue before the State makes any comment on the defendant's lack of remorse during any sentencing phase.

**IT IS ORDERED** denying the Motion for Reconsideration filed September 10, 2012.

**IT IS FURTHER ORDERED** affirming the court's ruling dated August 27, 2012 deferring a ruling on the Defendant's Motion to Preclude the State from Arguing Lack of Remorse During any Potential Sentencing Phase.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.